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Supreme Court of the United States,

OCTOBER TERM, 1900.

No. 190.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK, Plaintiff in Error, vs. LAWRENCE S. WELLING and MARION BONNOITT, Defendants in Error.	No. 17,620.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

I.

THE TERM, "PUBLIC ACTS," IN ARTICLE IV., § 1, OF THE CONSTITUTION OF THE UNITED STATES, REFERS TO THE PUBLIC STATUTES OF THE SEVERAL STATES, AND MAKES IT A RULE OF CONSTITUTIONAL OBLIGATION THAT WHEN SUCH STATUTES ARE PLEADED AND GIVEN IN EVIDENCE IN THE COURTS OF A SISTER STATE, THEY SHALL HAVE THE SAME FORCE AND EFFECT IN THE COURTS OF SUCH STATE THAT THEY WOULD HAVE IN THE STATE WHERE THE STATUTE WAS ENACTED, WHENEVER SUCH STATUTE IS AN INTEGRAL PART OF A CONTRACT VALID IN THE STATE WHERE THE STATUTE IN QUESTION WAS ENACTED, SUCH CONTRACT BEING MADE AND PERFORMABLE IN SUCH STATE.

It was suggested from the bench, during the oral argument of this case, that the term "public acts"

in Article IV., § 1, of the Constitution of the United States did not include and was not synonymous with the word "statutes," and counsel for plaintiff in error was asked if there was any decision of this Court in which the term in question had been held to require that full faith and credit should be given in each State to the public statutes of a sister State, relied upon as forming an integral part of a contract entered into and performable in the State where the statute prevails. To the interesting constitutional question thus raised we briefly address ourselves.

"Without doubt the constitutional requirement of Article IV., § 1, that 'full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State,' implies that the public acts of every State *shall be given the same effect by the courts of another State that they have by law and usage at home.* * * * Whenever it becomes necessary, under this requirement of the Constitution, for a court of one State, in order to give faith and credit to a public act of another State, to ascertain what effect it has in that State, *the law of that State must be proved as a fact.*"

Waite, *C. J.*, in Chicago & Alton R. R. *v.* Wiggins Ferry Co., 119 U. S., 615, 622, 623.

At the time of the adoption of the Constitution of the United States, the term "public acts" had a well settled meaning. It always referred to public statutes as distinguished from private statutes. "A general or public act is a universal rule that regards the whole community."

1 Blackstone's Commentaries, * p. 86.

Article IV., § 1, of the Constitution of the United States originated in the Committee of Detail in the Constitutional Convention, and in its original form was reported by that committee as follows: "Full faith shall be given in each State *to the acts of the Legislatures* and to the records and judicial proceed-

ings of the courts and magistrates of every other State."

"The Growth of the Constitution," Meigs, p. 254.
2 Madison's Papers, 1240.

When the clause thus reported by the committee of detail came before the Federal Convention for action, Mr. Randolph moved the following proposition: "Whenever the act of any State; whether legislative, executive or judiciary, shall be attested and exemplified under the seal thereof, such attestation and exemplification shall be deemed in other States as full proof of the existence of that act; and its operation shall be binding in every other State in all cases to which it may relate and which are within the cognizance and jurisdiction of the State wherein said act was done."

3 Madison's Papers, 1449.

At the same time Mr. Governeur Morris moved the following proposition on the same subject: "Full faith *ought* to be given in each State to the public acts, records and judicial proceedings of every other State; and the Legislature shall by general laws determine the proof and effect of such acts, records and proceedings."

These proposed forms of the clause in question, together with Article XVI. of the report of the committee of detail, were then referred to a committee consisting of Mr. Rutledge, Mr. Randolph, Mr. Gorham, Mr. Wilson and Mr. Johnson.

3 Madison's Papers, 1449.

This committee reported the clause back to the Federal Convention as Article XVI. in the following form: "Full faith and credit *ought* to be given in each State to the public acts, records and judicial proceedings of every other State; and the Legislature shall, by general laws, prescribe the manner in which such acts, records and proceedings shall be

proved and the effect which judgments obtained in one State shall have in another."

It is manifest that at this time the committee intended to provide expressly, *first*, how such public acts, records and judicial proceedings should be proved, and *second*, the effect which judgments obtained in one State should have in another, and that they did not then contemplate making an absolute requirement upon the courts of one State to give to the public statutes of another State the same meaning and effect that such statutes would have in the State of their enactment. This is shown by the fact that in the draft of the clause as reported the word "*ought*" is used instead of the word "*shall*," in the clause as it was finally adopted.

3 Madison's Papers, 1479.

The clause came up for consideration again in the convention on September 3, 1787, and a debate then occurred as to whether the meaning and effect of the provision should be limited by certain suggested changes *so as to restrain its meaning and effect to judgments and judicial proceedings.*

3 Madison's Papers, 1480, 1481.

"Thereupon, on motion of Mr. Madison, the words '*ought to*' were struck out and '*shall*' inserted; and 'shall' between 'Legislature' and 'by general laws' struck out and 'may' inserted *nem con.*"

3 Madison's Papers, 1481.

Thereafter the "committee on style" reported the clause in question as it now stands in the Federal Constitution.

"The Growth of the Constitution,"
Meigs, 256.

Manifestly, the purpose of the framers of the Constitution was to require full faith and credit to be given to the public statutes of each State when pleaded and

proved in the courts of a sister State in any case where rights had been established under such statutes, either by way of contract or otherwise, in the State passing the statute in question; and going a step further, the Constitutional Convention, after changing the term "ought" to the term "shall" so as to make the requirement of full faith and credit peremptory so far as the public statutes of sister States are concerned, authorized Congress to determine, first, how such public acts, records and judicial proceedings shall be authenticated, and, second, what effect shall be given in the courts of one State to the judgments and judicial proceedings of another State.

Congress is without power to change the meaning or qualify the effect of the first paragraph of Article IV., § 1, of the Constitution, and, consequently, has never attempted to do so.

"The clause of the Constitution propounds three distinct objects: First, to declare that full faith and credit shall be given the records, &c., of every other State; secondly, to prescribe the manner of authenticating them; and, thirdly, to prescribe their effect when so authenticated. The first is declared and established by the Constitution itself and is to receive no aid, nor is it susceptible of any qualification by Congress. The other two are expressly subjected to the legislative power."

2 Story on the Constitution (5th Ed.), § 1308.

Section 905 of the Revised Statutes of the United States establishes the effect to be given to the judgments of sister States, and provides for the authentication and proof of those public acts to which Article IV., § 1 of the Constitution as adopted requires that full faith and credit *shall* be given.

It surely must have been the intent of Congress to give effect to the constitutional provision in question, as applied both to judgments and to public acts, by providing as to the effect of the judgments and

as to the manner of authenticating and proving the acts. The acts of a sister State being thus authenticated and proven, it follows from the explicit language of the Constitution itself that full faith and credit must be given to such acts, and the term "full faith and credit" cannot reasonably be interpreted as having any other meaning than that in the construction of a contract or a corporate charter of which a statute of the State of the contract or corporate *situs* is an integral part, that such statute, when properly pleaded and proven, must be given the same force and effect by the Court considering the contract and the statute, that would have been given to such statute in the courts of the State where the contract was made and to be performed.

"'Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State.' The language is positive and declaratory, leaving nothing to future legislation."

2 Story on the Constitution (5th ed.), § 1309.

Whether in any case this doctrine should be extended, it is not necessary for us to discuss at this time or for this Court to determine now, but to deny the application of the constitutional provision for the purpose here indicated, is to make it possible for the courts of any State to absolutely nullify corporate membership contracts entered into in another State and valid under the public acts of such State, even though such contracts be made and performable in the State enacting such statutes, and be themselves regulative of the status of the corporation and its members.

We have assumed it to be settled law in this Court, as well as in the courts of many States, that in determining the rights of stockholders and members of a corporation in controversies between such members and the corporation growing out

of their contracts of membership and their status as stockholders, that the corporate charter and the public statutes of the State of the corporate *situs* fixing the corporate powers, enter into and form a part of the contract of membership, and must be given the same force and effect in the courts of other States that they are given in the courts of the corporate *situs*.

Chicago, &c., R. R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615, 622.
Relfe *v.* Rundle, 103 U. S., 222, 225, 226.
Dailey *v.* People's B. L. & S. Ass'n, 172 Mass., 533.
Condon *v.* Mutual R. F. L. Assn. (Md.), 44 L. R. A., 149.
Clark *v.* Mutual R. F. L. Assn. (D. C.), 43 L. R. A., 390.
Howard *v.* Mutual R. F. L. Assn. (N. C.), 45 L. R. A., 853.
Taylor *v.* Mutual R. F. L. Assn. (Va.), 45 L. R. A., 621.
Campbell *v.* Eastern B. & L. Assn. (Va.), 37 S. E. Rep., 350.
Eastern B. & L. Assn. *v.* Snyder (Va.), 37 S. E. Rep., 298.

It was asked during the argument of this cause why the case had not been removed from the State court of first instance to the United States Circuit Court, and counsel for plaintiff in error replied that he did not know, as he had no connection with the litigation at that time; but, an examination of the record will show that in view of the form of action in the State court, the amount in controversy was probably regarded as only the $1,800 sued for as a penalty under the State statute for the alleged failure to discharge the mortgage of record, and hence, that the case was not removable to the United States Circuit Court, and the only remedy of the plaintiff in error was through a writ of error from this Court to the Supreme Court of South Carolina.

"If full faith and credit were not given to them

(the public acts of Illinois) by the Missouri Court in the judgment which has been rendered, that may entitle the Railroad Company to a review of the judgment here on a writ of error. But in no other way can this or any other Court of the United States invalidate that judgment on account of such mistakes if any were in fact made."

Chicago, &c., R. R. Co. *v.* Wiggins Ferry Co., 108 U. S., 18, 22.

That the term "public acts," in Article IV., § 1 of the Constitution of the United States, has the meaning here contended for is, we think, clear upon both reason and authority.

Unity *v.* Burrage, 103 U. S., 447, 454.

"The words '*act* of the Congress' are as strong and unequivocal as *statute* of the Congress."

Story, *J.*, in United States *v.* Smith, 2 Mason, 143, 151.

"Acts are general or special, public or private. All legislative acts are laws, and if not laws then they are not acts of legislation."

People *v.* Tiphaine (N. Y.), 3 Parker's Cr. Rep., 244; s. c., 13 Howard's Prac. (N. Y.), 76, 77.

II.

A CITIZEN OF ONE STATE, BECOMING A MEMBER OF A PURELY MUTUAL CORPORATION ORGANIZED UNDER THE LAWS OF ANOTHER STATE, BECOMES BOUND, AS TO HIS CONTRACTUAL OBLIGATIONS AS A STOCKHOLDER, BY THE LAWS AND STATUTES, THAT IS, THE "PUBLIC ACTS" OF THE STATE OF THE CORPORATE SITUS, AND WHENEVER HIS RELATIONS TO THE CORPORATION AND HIS CONTRACT OF MEMBERSHIP WITH IT ARE UNDER CONSIDERATION IN THE COURTS OF THE STATE OF HIS

DOMICILE, THE SAME FORCE AND EFFECT MUST BE GIVEN TO THE PUBLIC STATUTES OF THE STATE OF THE CORPORATE SITUS FIXING AND REGULATING THE CONTRACT OF MEMBERSHIP AND THE RIGHTS AND DUTIES OF THE MEMBER THAT WOULD BE GIVEN TO THEM BY THE COURTS OF THE STATE OF THE CORPORATE SITUS.

Chicago & Alton R. R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615, 622, 623.
Relfe *v.* Rundle, 103 U. S., 222.
Dailey *v.* People's B. L. & S. Ass'n, 172 Mass., 533, 534, 535.

"The rights and benefits given by the laws of Connecticut in this regard are as much part of these contracts as if incorporated therein, not only because they are to be taken as if entered into there, but because there was the place of performance, and the stipulation of the parties was made with reference to the laws of that place."

Washington Central Bank *v.* Hume, 128 U. S., 195, 206, 207.

In such a case as the one at bar, to permit the Supreme Court of South Carolina to invalidate the contract between the defendants in error as stockholders in the plaintiff in error by denying validity to the New York statutes regulating the contract of membership, is not only to deny full faith and credit to the public acts of the State of New York, but comes, we respectfully submit, within the scope of the XIVth Amendment to the Constitution of the United States, and is a denial of the equal protection of the laws to the plaintiff in error.

Allgeyer *v.* Louisiana, 165 U. S., 578.
Holden *v.* Hardy, 169 U. S., 366, 391.
Gibson *v.* Mississippi, 162 U. S., 565, 582, 583.
Ex parte Virginia, 100 U. S., 339, 346, 347.

Hence, even if this Court should hold that Article IV., § 1, of the Constitution of the United States is inoperative to require "full faith and credit" to be given to the public statutes of the State of New York forming a part of the contract between plaintiff in error and defendants in error as stockholders therein, yet, nevertheless, it would seem that this Court has full power and jurisdiction under the provisions of the XIVth. Amendment to prevent the Supreme Court of South Carolina from abrogating a contract, valid under the laws of New York and performable in that State, merely because one of the parties to the contract happens to be a citizen of South Carolina. The evil and far-reaching consequences of a decision of this Court permitting the annulment by State Courts of the contractual obligations of the members of corporations of sister States is too apparent upon the face of the record in this case to require elaborate discussion.

III.

UNDER THE CONTRACT OF MEMBERSHIP BETWEEN THE DEFENDANTS IN ERROR AND THE PLAINTIFF IN ERROR, DEFENDANTS IN ERROR WERE OBLIGATED NOT TO BRING ANY SUIT OR ACTION AGAINST THE PLAINTIFF IN ERROR ARISING OUT OF THEIR RIGHTS OF MEMBERSHIP THEREIN EXCEPT "IN THE COUNTY OF ONONDAGA AND STATE OF NEW YORK."

Original Brief for Plaintiff in Error, p. 7.

That such a provision as to the place of suit is valid and enforceable in the State of New York is beyond question.

Greve *v.* Ætna Live Stock Ins. Co., 81 Hun (N. Y.), 28, 30.

In a recent case decided by the Supreme Judicial Court of Massachusetts, *Mr. Chief Justice Holmes* delivering the opinion of the Court, a clause identical with the one in the case at bar was held to be a binding condition requiring a member of the corporation to sue in the State and County indicated. Passing upon this question *Mr. Chief Justice Holmes* says:

"As in our opinion the contract between the parties has not been ended, there is a further ground upon which their case is disposed of, which we thought in our earlier decision that it would not be necessary to consider. The certificate is granted in consideration, among other things, of 'full compliance with the terms and conditions printed on the back, all of which are hereby referred to and made a part of this contract.' One of the conditions is that 'any action brought against this association by any shareholder shall be brought * * * in the County of Ontario, State of New York.' We are of opinion that this condition should be enforced. We do not mean to overrule *Nute* v. *Hamilton Ins. Co.*, 6 Gray, 174, but it is obvious that that was a somewhat hesitating decision, and we think that it should not be pressed so far as to dispose of this case. Here we are dealing with a New York corporation, most of whose members would live in New York and the greater part of whose dealings and contracts would naturally take place also in New York. There we take it from *Greve* v. *Ætna Live Stock Ins. Co.*, 81 Hun, 28, which was put in evidence, the condition would be an answer to an attempt to sue in another county. The condition, at least so far as we have occasion to consider it, refers to suits by members of the corporation as such. It is perfectly reasonable, and as applied to a New York corporation, in view of the New York law, cannot be held contrary to the policy of Massachusetts with regard to such contracts as happen, by the ac-

cidents of post office communication, to be concluded on this side of the boundary line. The language is different from that used in *Nute* v. *Hamilton Ins. Co.*, and stronger. It plainly purports to attach a condition to the contract, and we are of opinion that it does so effectually. It is not intimated in *Nute* v. *Hamilton Ins. Co.* that when such a condition is attached to a contract and is valid there is any technical difficulty in enforcing it as an answer to an action in another place. It is true that in this case the question is not between counties but between States, and that our decision requires a resident of Massachusetts to go elsewhere for a remedy upon a contract made here (*Richard* v. *Manhattan Ins. Co.*, 31 Mo., 518, 520, 521). But objections of this sort may be made to appear more serious than they are. Courts are less and less disposed to interfere with parties making such contracts as they choose, so long as they interfere with no one's welfare but their own. The plaintiff might have given his money to the corporation if he had seen fit. We see no reason why he might not give it upon such partial return as he was content to accept. It will be understood that we are speaking of parties standing in an equal position, where neither has any oppressive advantage or power, and that our decision as to the validity of the condition as a defense does not go beyond the particular circumstances of this case. See further, *Matter of New York, Lackawanna & Western R. R.*, 98 N. Y., 347, 453; *Heslin* v. *Eastern Building & Loan Assn.*, 28 Misc. (N. Y.), 376; *Carpenter* v. *Shepherdson*, 43 Wis., 406, 413."

Judgment for defendant.

Dailey *v.* The People's B., L. & S. Assn., Supreme Judicial Court of Mass., decided February 27, 1901, not yet reported.

We copy the foregoing extract from a certified copy of the opinion.

Having thus reviewed the most interesting questions that were mooted upon the oral argument of this case, we now respectfully submit the same for final determination by this Court, but in doing so, we venture to refer the Court to the brief heretofore filed by us in No. 453 (Eastern Building & Loan Assn. *v.* Ebaugh) in opposition to the motion made by defendant in error in that case to dismiss the writ of error upon the ground that no Federal question is involved.

Respectfully submitted,

WM. HEPBURN RUSSELL,
WM. BEVERLY WINSLOW,
For Plaintiff in Error.

D. A. PIERCE,
Of Counsel.